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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Division Bench

Miscellaneous Appeal No. 1191 of 2004

MISCELLANEOUS APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988

APPELLANT/: (Defendant No.1)

M/s.Bajaj Allianz General Insurance Co. Ltd., Head Office: G.E. Road, Plaza Airport Road, Yada, Pune, Maharashtra,
Through: Chauhan Complex, Opposite Raj Kumar College, G.E. Road, Raipur, Chhattisgarh.

- Versus -

RESPONDENTS/:

(Claimant No.1)

1. Sadhu Sharan, S/o Shivnath Sahu, Aged about 45 years, Agriculturist, R/o Village: Karanjwar, Tehsil: Pratappur, Distt.: Surguja, Chhattisgarh.

(Claimant No.2)

2. Bilasi, Aged about 43 years, W/o Sadhu Sharan Sahu, House wife, R/o Village: Karanjwar, Tehsil: Pratappur, Distt.: Surguja, Chhattisgarh.

(Defendant No.2)

3. Devchandra Ram, Aged about 50 years, S/o Baldev Ram, R/o Village: Kodaura, Police Station: Rajpur, Tehsil: Ambikapur, At present R/o Domanhil, Chirmiri, Korea, Chhattisgarh.

(Defendant No.3)

4. Jaimangal Pratap Singh, Aged about 20 years, S/o Devchandra Ram, R/o Village: Kodaura, Police Station: Rajpur, Tehsil: Ambikapur, At present R/o Domanhil, Chirmiri, Korea, Chhattisgarh.

P.R. No. 2641/07
Presented on 23.11.07
dated

Claim in appeal valued at Rs.2,07,840/-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक MA 1191/04 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri A.K. Patnaik, C.J. &
Hon'ble Shri Fakhruddin, J.

15-03-2005

The facts of the case briefly are that a Scooter bearing registration No.CG-16/5870 was owned by respondent No.3 Devchandra Ram. On 10-3-2003, the said Scooter was being driven by respondent No.4 Jaimangal Pratap Singh who is said to be having learner's license. While respondent No.4 was driving the scooter on 10-3-2003 one Chain Prakash alongwith his sister came in a cycle near the Cherhani Nala and the scooter hit the cycle and injured Chain Prakash. Chain Prakash was admitted in the hospital. He finally succumbed to injuries and died on 14-3-2003. Respondents/claimants No.1 and 2 i.e. Sadhu Sharan and Bilasi respectively who are parents of Chain Prakash then filed claim case No.37/2003 under Section 166 of Motor Vehicles Act, 1988 and the Third Additional Motor Accident Claims Tribunal (FTC), Surajpur, Sarguja by award dated 14.9.2004 awarded a compensation of Rs.2,07,840/- against the appellant/Insurance Company. Aggrieved by the said award, the appellant/Insurance Company has filed the instant appeal.

Mr. Prashant Jaiswal, Sr. Advocate for the appellant/ Insurance Company submitted that the case of the appellant/Insurance Company in the written statement filed

(पीछे देखिये)

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

before the Tribunal was that respondent No.4 was driving the scooter at the time of accident with a learner's license and hence there was breach of the insurance policy by respondent No.3 and for this breach of insurance policy, the appellant/ Insurance Company was not liable for compensation.

Mr. J.A. Lohani, learned counsel appearing for respondents No. 3 and 4 on the other hand submitted that in the case of National Insurance Co. Ltd. vs. Swaran Singh and others reported in AIR 2004 SC 1531 the Supreme Court has already held that if the vehicle at the time of accident was driven by a person having learner's license, the Insurance Company would be liable to satisfy the decree. He submitted that in view of the decision of Supreme Court in National Insurance Co. Ltd. (supra), this appeal has no merit and should not be entertained at all.

Confronted with the said decision of the Supreme Court in National Insurance Co. Ltd. (supra), Mr. Jaiswal submits that in the said decision the Supreme Court has made it clear that the Insurance Company can raise a defence of breach of policy by the owner of the vehicle and in case Insurance Company is able to prove before the Motor Accident Claims Tribunal that there has been a breach of insurance policy then the Insurance Company would be entitled to reimbursement of the amount paid by it in satisfaction of the decree for compensation from the owner of the vehicle.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

But we find from the pleadings of the Insurance Company before the Tribunal that the only defence taken by the Insurance Company with regard to breach of the policy was that respondent No.4 was driving the scooter with a learner's license and this was a breach of insurance policy by the respondent No.3. Besides this breach of policy, Mr. Jaiswal fairly submits that there was no other breach of policy pleaded in the written statement of the appellant filed before the Tribunal. In paragraphs 88, 89 and 105(viii) of the judgment of the Supreme Court in Swaran Singh's case as reported in the AIR (supra), the Supreme Court has clearly held that if a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

For the aforesaid reasons we find no merit in this appeal and accordingly, the same is dismissed.

Sd/-
Chief Justice

Sd/-
Fakhruddin
Judge

Pathak

(पीछे देखिये)